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**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK**

**PHILIP FEI**, on behalf of himself  
and classes of those similarly situated,

**Plaintiff,**

**-against-**

**WEST LB AG,**

**Defendant.**

**07 Civ. 8785 (HB)(FM)**

**DECLARATION OF  
LINDA A. NEILAN**

I, Linda A. Neilan, declare, upon personal knowledge and under penalty of perjury, pursuant to 28 U.S.C. § 1746, that the following is true and correct:

1. I am an associate at Outten & Golden LLP, attorneys for Plaintiff, and an attorney in good standing admitted to practice in the State of New York and before this Court. I make this declaration in support of Plaintiff's Motion for Conditional Certification as a Fair Labor Standards Act ("FLSA") Collective Action and for Court-Authorized Notice Pursuant to Section 216(b) of the FLSA.

**Procedural History**

2. Plaintiff Philip Fei filed this class and collective action complaint on October 11, 2007, on behalf of executives and managers at WestLB AG.

3. On December 14, 2007, Defendant filed its Answer and Counterclaims against Mr. Fei.

4. On December 14, 2007, Defendant filed a Motion to Dismiss the Complaint or Alternatively to Preclude the Use of Misappropriated Information and Preclude Philip Fei from Being the Collective Class Action Representative.

5. On January 11, 2008, Plaintiff filed a Motion to Dismiss Counterclaims.

6. On March 6, 2008, Plaintiff amended his complaint adding retaliation claims under the FLSA and the New York Labor Law (“NYLL”).

7. On March 24, 2008, Defendant filed an amended Answer and Counterclaims.

8. On April 15, 2008, the Court heard oral arguments on the motions to dismiss.

9. To date, Plaintiff has taken two depositions pursuant to Fed. R. Civ. P. 30(b)(6) – one related to Defendant’s counterclaims and one related to Defendant’s policies and practices concerning Defendant’s classification and reclassification of employees as exempt from the overtime provisions of the FLSA and the NYLL.

10. On March 18, 2008, Defendant produced two witnesses to testify at the deposition pursuant to Fed. R. Civ. P. 30(b)(6) related to Defendant’s classification and reclassification of employees as exempt from the overtime provisions of the FLSA and the NYLL. Because the witnesses were not competent to testify regarding the entire time period, Defendant produced another witness on April 18, 2008 to further testify.

11. On March 27, 2008, Plaintiff noticed the deposition of Gregory Leahy (in-house counsel who was involved in Defendant’s reclassification project) for April 14, 2008. On April 11, 2008, Defendant stated that “the deposition of Mr. Leahy would not

accomplish much as Defendant is not now waiving the applicable attorney-client and work product privileges.” Attached as Exhibit A is a true and correct copy of an email from Jason Habinsky to me, Jack Raisner, Tara Lai Quinlan, Ned H. Bassen, and Vilia B. Hayes dated April 11, 2008. Despite Plaintiff’s repeated requests to Defendant to provide dates on which Mr. Leahy is available, Defendant has not done so.

12. On April 2, 2008, Plaintiff noticed the deposition of Richard Greenberg, Esq. (the outside attorney who was involved in Defendant’s reclassification project) for April 21, 2008. Defendant is not producing him for a deposition until May 13, 2008.

13. On April 10, 2008, Plaintiff noticed the deposition of Vivian Yost (the outside consultant who was involved in Defendant’s reclassification project) for April 23, 2008. On April 22, 2008, the day before the deposition, Defendant cancelled the deposition. Ms. Yost’s deposition is now scheduled to take place on May 15, 2008.

14. Defendant has not yet taken any depositions.

15. On December 26, 2007, Plaintiff served his First Set of Requests for Production of Documents. Defendant did not produce any documents until March 4, 2008 and then produced only some responsive documents, including Plaintiff’s personnel file, an employee handbook, and documents regarding salary increases, among others. After Plaintiff sought the Court’s assistance, Magistrate Judge Maas ordered Defendant to produce all “macro documents” regarding Defendant’s policies and practices concerning classification and reclassification of employees by April 10, 2008 and all “micro documents” regarding same by April 24, 2008. Defendant did not produce the “micro documents” until 5:30 p.m. yesterday.

16. On March 19, 2008, Plaintiff served his Second Set of Requests for Production of Documents. Although the documents were due on April 21, 2008, Defendant has not produced all responsive documents.

**Exhibits**

17. Attached as Exhibit B is a true and correct copy of Plaintiff's Amended Class Action Complaint, filed on March 6, 2008 ("Am. Complaint").

18. Attached as Exhibit C is a true and correct copy of Defendant's Answer and Counterclaims ("Answer"), filed on March 24, 2008.

19. Attached as Exhibit D is a true and correct copy of select testimony from a Fed. R. Civ. P. 30(b)(6) deposition of Defendant by Lisa Carro ("Carro Dep.") on March 18, 2008.

20. Attached as Exhibit E is a true and correct copy of select testimony from a Fed. R. Civ. P. 30(b)(6) deposition of Defendant by Linda Shirley ("Shirley Dep. 3/18/08") on March 18, 2008.

21. Attached as Exhibit F is a true and correct copy of select testimony from a Fed. R. Civ. P. 30(b)(6) deposition of Defendant by Linda Shirley ("Shirley Dep. 4/18/08") on April 18, 2008.

22. Attached as Exhibit G is a true and correct copy of an email from Greg Rieber to Philip Fei dated May 9, 2006 and one of the Excel worksheets from the attachment entitled "Exempt Executive Staff to Remain Exempt." This exhibit has been filed under seal with the Clerk of the Court in accordance with the Stipulation and Order Concerning Confidential Material Produced in Discovery.

23. Attached as Exhibit H is a true and correct copy of a document entitled "List of Executive & Manager Positions," that was created by culling all job titles from the class list that Defendant produced (Bates stamped D0316-D0336).

24. Attached as Exhibit I is a true and correct copy of a document entitled "FLSA Changes" (Bates stamped D0353-D0358). This exhibit has been filed under seal with the Clerk of the Court in accordance with the Stipulation and Order Concerning Confidential Material Produced in Discovery.

25. Attached as Exhibit J is a true and correct copy of a document entitled “Fair Labor Standards Act Exemption Audit Worksheet” (Bates stamped D0340-D0342). This exhibit has been filed under seal with the Clerk of the Court in accordance with the Stipulation and Order Concerning Confidential Material Produced in Discovery.

26. Attached as Exhibit K is a true and correct copy of a document entitled “Non-Exempt Employees Policy” (Bates stamped D0234-D0235).

27. Attached as Exhibit L is a true and correct copy of Plaintiff’s Proposed Notice to Potential Plaintiffs (“Proposed Notice”).

28. Attached as Exhibit M is a true and correct copy of the model employment discrimination “plain-language notice” suggested by the Federal Judicial Center (“Model Notice”).

29. Attached as Exhibit N is a true and correct copy of the declaration of TinaMarie Candela dated April 22, 2008 (“Candela Dec.”).

30. Attached as Exhibit O is a true and correct copy of the declaration of Philip Fei dated April 24, 2008 (“Fei Dec.”).

31. Attached as Exhibit P is a true and correct copy of the declaration of Thelma Pennycooke dated April 23, 2008 (“Pennycooke Dec.”).

32. Attached as Exhibit Q is a true and correct copy of the declaration of Ho Nguyen dated April 24, 2008 (“Nguyen Dec.”).

33. Attached as Exhibit R is a true and correct copy of the declaration of Sean Killoran dated April R, 2008 (“Killoran Dec.”).

Dated: April 25, 2008  
New York, NY

/s/ Linda A. Neilan  
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**Attorneys for Plaintiff and the Putative Class**